

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MAY 5, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 6:09 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Manager/Executive Director Tewes announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Legal Authority: Government Code Section 54957.6
Agency Negotiators: City Manager, City Attorney, Human Resources Director

Executive Management Group 1-A

Chief of Police
Director of Business Assistance & Housing Services
Director of Community Development
Director of Finance
Director of Public Works/City Engineer
Human Resources Director
Recreation and Community Services Manager
Assistant to the city Manager
Council Services and Records Manager

Middle Management Group 1-B

Police Lieutenant
Deputy Director of Public Works
Assistant City Attorney

Assistant Director of Finance
Chief Building Official
Human Resources Supervisor
Planning Manager
Senior Civil Engineer
Senior Project Manager/Community Buildings
Budget Manager
Business Assistance and Housing Services Manager
Police Support Services Supervisor
Senior Planner
Project Manager
Utility Systems Manager
Recreation Supervisor
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C
Administrative Analyst
Secretary to the City Attorney
Accounting Technician
Human Resources Assistant

3.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority	Government Code 54957
Public Employee Performance Evaluation:	City Attorney
Attendees:	City Council, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:08 p.m.

Council/Agency Member Chang was not in attendance at this time.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

SILENT INVOCATION

Mayor/Chairman Kennedy requested that Tom Castle, former Mayor, City Council Member, and long time developer in the community, be remembered.

PLEDGE OF ALLEGIANCE

Mayor/Chairman Kennedy led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented proclamations to Deputy Director of Public Works-Engineering Bjarke proclaiming the weeks of May 11-17, 2004 as “Bike to Work Week” and May 18 thru May 24, 2004 as “National Public Works Week.”

Mr. Bjarke informed the Council that two members from the Bicycle and Trails Advisory Committee (BTAC); Carl McCann and Steve Chew, were in attendance who have been very active and have had a positive influence in making the biking community safe and available to many citizens.

Carl McCann informed the Council that on Thursday, May 20, there will be energizer stations throughout the bay area. He indicated that the BTAC will be sponsoring an energizer station at the Caltrain station from 6:30-9:30 a.m. He announced that in conjunction with Art a la Carte, a bike rodeo will be hosted on Saturday May 15, 2004 jointly sponsored by the BTAC and the Police Officer’s Association.

Mayor Kennedy presented a proclamation to Interim Police Chief Cumming recognizing May 15, 2004 as “Peace Officer’s Memorial Day and Police Week.” He indicated that a memorial ceremony will be taking place on May 14 at 11 a.m. at the Sheriff’s Office and encouraged Council members and members of the public to attend the ceremony.

PRESENTATIONS

Assistant to the City Manager Eulo announced the winners of the Earth Day Art & Science Fair as follows: Best Idea – Joshua Priest (2nd grade); Best Art Project - Girl Scout Troop 1355 (8th grade); Best Presentation Joshua Schwarzenbach (4th grade); and Best in Show – Kayla Cromer (3rd Grade). The annual Environmental Poster Contest winners were as follows: K-3rd grade: 1st place – Doreene Kang, 2nd place – Samantha Latko, and 3rd place Sacha Chapuis; 4th-6th grade: 1st place – Steven Linder, 2nd place – Petra Halbur, and 3rd place – Vienna Lai; 7th – 9th grade: 1st place – Aurelia Ruiz; 2nd place – Isaac Morales, and 3rd place – Christine Faulk; and 10th-12th grade: 1st place (tie) -- Jessica Rubenstein and Travis Aviles; and 3rd place – Theresa Jacob.

Police Lieutenant Booten and Police Corporal Reno made a presentation informing the Council of a donation from Specialized Bicycles of new bikes for the Police Department Bike Patrol program.

Corporal Rodney Reno thanked the Mayor and Council for giving the Police Department the opportunity to approve the purchase of eight new bicycles that will be part of the Police Department's bike patrol. He indicated that the Police Department will be co-sponsoring a bike rodeo along with the BTAC at Art a La Cart to teach youth about bike safety and the helmet law. He informed the Council that the Police Department was awarded grant monies and that Specialized Bicycles provided an aggressive pricing to be able to make the purchase of the bicycles possible. He stated that BTAC member Steven Cheu, Sunshine Bicycles, was instrumental in getting, sizing, and assembling the bikes in a quick time frame so that they can be used at the Art a La Cart function as well as other upcoming functions in Morgan Hill (e.g., Mushroom Mardi Gras, Fourth of July parade, Taste of Morgan Hill, etc.).

CITY COUNCIL REPORT

Council Member Carr reported on the following: 1) SCRWA - Next Tuesday, the SCRWA Board will be discussing recycling water rates. He stated that the Santa Clara Valley Water District is talking about raising water rates and that there have been discussions with the District about what this would mean to recycle water rates. There is a concern that should these rates go up, clients who use recycled water would not continue to do so. If large agricultural uses (e.g., golf course, school/municipal users, etc.) stop using recycled water, more water will be pumped from aquifers. He said that the SCRWA Board will continue to fight for more recycle water use, a benefit to South County. 2) City-School Liaison Committee - He indicated that he and Council member Tate, liaisons to this Committee, get to hear the great things taking place in the School District on a regular basis. He shared that Nordstrom Elementary School was selected by the California Department of Education as the 2004 California Distinguished School, an outstanding accomplishment. He indicated that other schools in the District that have won this award include: Encinal, PA Walsh, and Jackson Elementary School. At the high school level, he stated that the 10th grade students excelled in the spring 2004 California High School Exit Exam, noting that 84% of the sophomores were successful in passing both the math and English portions of this exam, a 20% growth in each of these two areas over the past two years. He indicated that Sobrato High School will be holding an open house on Tuesday, May 18 with a presentation being made and tours conducted. He felt that these were all great achievements attributable to the students, parents, teachers and other staff members from the Morgan Hill Unified School District.

SUBCOMMITTEE REPORTS

Council Member Tate indicated that the Library Subcommittee was charged to report back with a recommendation on where to site and how to finance a library facility in Morgan Hill by the end of June 2004. He said that the City Visions newsletter contained an overview of the two different sites being reviewed. He requested that the public provide feedback on its opinion on which of the two sites it would like to see the new library constructed.

CITY MANAGER REPORT

City Manager Tewes indicated that he did not have a report to present this evening.

CITY ATTORNEY REPORT

Acting City Attorney Siegel stated that he did not have a City Attorney's report to present this evening.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. Martin Kapetanic, speaking on behalf of the Morgan Hill Aquatics Incorporated, thanked the Morgan Hill Times for publishing the brick donor form in its last edition. She advised the Council and the public that the deadline to order donor bricks is May 14 so that they can be laser inscribed and installed in the donor walkway for the aquatics center grand opening event scheduled for June 12 & 13. She indicated that over 100 bricks have been sold, noting that over 2,000 bricks have been purchased. She requested the public's support of this fundraiser event as it is a mission to support the aquatics center in any financial possible. No further comments were offered.

City Council Action

CONSENT CALENDAR:

City Manager Tewes informed the Council that members of the audience have asked that item 6 be removed from the consent calendar to allow for public comment.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1-5 as follows:*

1. **RECWARE CONTRACT ADDENDUM FOR AQUATICS CENTER**
***Action:** **Authorized** the City Manager to Execute an Addendum to the Existing RecWare Software Contract in the Amount of \$20,000.*
2. **PURCHASE ORDER WITH PIVOT INTERIORS FOR FURNISHINGS, FIXTURES AND EQUIPMENT (FF&E) FOR THE POLICE FACILITY AT 16200 VINEYARD BOULEVARD**
***Action:** **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$175,625 with Pivot Interiors for Furnishings, Fixtures and Equipment (FF&E) at the New Police Facility.*
3. **PURCHASE AND INSTALLATION OF THE COMMUNICATIONS TOWER FOR POLICE FACILITY AT 16200 VINEYARD BOULEVARD**
***Action:** **Authorized** the City Manager to Approve a Purchase Order in the Amount of \$47,774 to L.D. Strobel Company for the Installation of the Police Department Communications Tower from the Furnishings, Fixtures and Equipment (FF&E) Funds of the New Police Facility.*
4. **BI-ANNUAL VACANCY RATE SURVEY**

Action: **Established** the Bi-Annual Vacancy Rate for April 2004 as Recommended by the Planning Commission.

5. **2003-2004 CITY WORKPLAN, THIRD QUARTER UPDATE**

Action: **Accepted** Third Quarter Update of the 2003-2004 Workplan.

6. **ADOPT ORDINANCE NO. 1673, NEW SERIES**

City Manager Tewes informed the Council that item 6 is the adoption of an ordinance the Council previously reviewed and approved relating to the regulation of signs for tobacco products.

Mayor Kennedy opened the floor to public comment. Rosa Ontiveras, representing Lori Escobar and the El Toro Youth Center/Community Solutions, thanked the Council for addressing the issue of tobacco advertising that targets the community's youth. She stated that after reviewing the City's ordinance, areas of concern have been found that are not being addressed by the ordinance. She said that the Live Oak High School survey conducted by Public Health in May 2003 showed that students believe that it is easy to obtain cigarettes in Morgan Hill. She stated that under aged smokers are involved in behavior that is illegal and that these behaviors increase the risk for youth to continue the experimentation of other illegal substances and other unlawful acts. She requested that the Council consider the enactment of stronger measures such as requiring tobacco retailers to have a City issued permit so that those who are selling tobacco can be identified.

No further comments were offered.

City Manager Tewes indicated that a number of the items addressed by Ms. Ontiveras were discussed by the Council in its consideration of the ordinance. The Council asked staff to monitor the ordinance and report back to the Council on its effectiveness. Therefore, there will be continued discussions about regulations of tobacco products.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the Reading, and **Adopted** Ordinance No. 1673, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.76.020(56.5) (Definitions – Tobacco Advertising Sign) AND AMENDING SECTION 18.76.250 (Commercial and Industrial Zone Signs – Window Signs) OF CHAPTER 18.76 (Sign Code) OF TITLE 18 (Zoning) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF TOBACCO ADVERTISING SIGNS.**

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

City Clerk/Agency Secretary Torrez requested that item 9 be pulled from the Consent Calendar.

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chair Sellers, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Chang absent, **Approved** Consent Calendar Items 7-8 as follows:*

7. **AGREEMENT WITH THE LAW FIRM OF ENDEMAN, LINCOLN, TUREK & HEATER**

Action: ***Authorized** the City Manager to Execute an Agreement with the Law firm of Endeman, Lincoln, Turek & Heater.*

8. **APPROVAL OF COST SHARING AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT FOR LLAGAS CREEK FLOOD PROTECTION (PL 566) TECHNICAL STUDIES**

Action: *1) **Approved** Appropriation of \$300,000 from the Current Year Unappropriated RDA Fund Balance for This Project; and 2) **Authorized** the City Manager, Subject to City Attorney Review and Approval, to Execute a Cost Sharing Agreement with the Santa Clara Valley Water District for the Accomplishment of Technical Studies Related to the Design of the Llagas Creek Flood Protection Project.*

9. **MINUTES OF THE JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF APRIL 21, 2004**

Council Services & Records Manager Torrez requested clarification of page 23 of the April 21, 2004 minutes relating to Council's summer meeting schedule. She indicated that the minutes indicate that August 4, 2004 was identified as a meeting date to be cancelled to accommodate Council vacation schedules. She noted that the minutes also reflect that the Council may consider cancelling the June 23, 2004 meeting. She requested Council confirmation that the minutes reflect the Council's intention regarding the summer meeting schedule.

Council Member Tate indicated that he did not hear that the August 4, 2004 meeting date had been cancelled at the April 21, 2004 meeting and that it was his recollection that this meeting date was open for cancellation.

Mayor Kennedy confirmed that the Council will not be meeting on August 4, 2004.

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chair Sellers, the City Council on a 4-0 vote with Council/Agency Member Chang absent, **approved** the April 21, 2004 minutes as submitted.*

City Council Action

CONSENT CALENDAR: (Continued)

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Item 10 as follows:*

10. ADOPT ORDINANCE NO. 1672, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1672, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1549, NEW SERIES, TO ALLOW AMENDMENT OF THE APPROVED GATEWAY CENTER PLANNED UNIT DEVELOPMENT LOCATED AT 18605 MONTEREY ROAD. (APPLICATION ZAA-01-05: MONTEREY – SOUTH VALLEY DEVELOPERS) (APN 764-10-004).***

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

11. PROTEST PRO-04-02: ANNEXATION, ANX-02-02: COCHRANE-BORELLO II – Resolution No. 5787

Planning Manager Rowe presented the staff report, indicating that the purpose of this item is to adopt a resolution to set a date for consideration of any protest to the annexation. He confirmed that any questions relating to the materials presented should be saved for the actual hearing date.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5787, Notice of Intent to Hold a Public Hearing on the “Protest Proceeding” at the Regular Council Meeting of June 2, 2004.*

12. COMMUNITY DEVELOPMENT USER FEE ADJUSTMENTS – Resolution No. 5788

Director of Finance Dilles presented the staff report recommending that the Council approve the second portion of a three phase series of development user fee increases by adoption of the resolution. He informed the Council that when staff returns to the Council a year from now, staff will identify the fees

that would be proposed at that time. He indicated that the idea of increasing the developer user fees over time was to try to minimize the impact to the public. He stated that the increases are necessary in order for the City to move toward full cost recovery for planning and engineering and for the community development fund to be self supporting. Staff determined that even with these increases, the City would not cover all costs in next year's budget for community development. However, staff will be able to balance next year's budget by drawing down on community development fund reserves. In moving toward full cost recovery by July 2005, the City will be heading toward full cost recovery. He informed the Council that staff distributed the notice of the proposed fee adjustment to local developers and that they were notified of this evening's public hearing. He indicated that staff did not specifically met with the developers on this topic, but that staff has met with them in the past on the subject of the report, the methodology and the need to have full cost recovery.

Mayor/Chairman Kennedy opened the public hearing. Dick Oliver, Dividend Homes, stated his support of the need for the City to make a full cost recovery of its cost and that he did not believe that the City should not be subsidizing the development community. He informed the Council that in addition to these fees, there are other impact fees that will increase on the same three step basis next January as well. He indicated that in last year's competition, there was approximately \$47,000 per unit in Measure P commitments; this includes the cost of subsidizing BMR units, or paying \$475,000 for a 15-unit project to waive the requirement for a BMR unit. When you add up the costs under the Parks and Paths, safety improvements for schools, offsite improvements, etc., it results in costs of approximately \$47,000 and that this does not include fees for the application or processing of the Measure P application. He stated that this number would be increasing. He felt that the Council needs to be aware that when developers add these costs on top of the City's cost recovery, the development community is paying a hefty share of fees. He recommended that at some point in time, the City examine the Measure P/C fees that are over and above what is normal that developers believe are stretching the limits of development in Morgan Hill. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Vice-chair Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5788, Revising Fees and Service Charges.*

PUBLIC COMMENT

Mayor Kennedy indicated that during the break, the Council/Agency Board received another public comment card on items not listed on the agenda. He inquired whether the Council was willing to hear the speaker on the topic of development in Coyote Valley.

Action: *By consensus, the Council **agreed** to reopen the public comment portion of the meeting.*

Jessica Vernon indicated that at the last Council meeting, the Council discussed following up and soliciting council members from San Martin and Gilroy regarding the impact of Coyote Valley and the development plan that the City of San Jose is proposing of 80,000 individuals to south county communities. She inquired whether there was any further follow up with Mayor Ron Gonzalez in order to get some representation from the Morgan Hill City Council on the task force. She informed the

Council that the next task force and community meeting will be held on Saturday, May 15, 2004 at the South County Community Center located on Cottle Road. She felt that this was an important community workshop as the City of San Jose will solicit feedback on the plans. She indicated that the City of San Jose is trying to finalize their plans by September or October 2004. She requested a status report on the progress toward soliciting other communities to help stop the Coyote Valley Specific Plan.

Mayor Kennedy indicated that he received a notice that a meeting would be held on Monday, May 17.

Ms. Vernon indicated that there are two meetings proposed: 1) the community workshop meeting to be held on Saturday, May 15; and 2) a follow-up task force meeting to be held on Monday, May 17.

Mayor Kennedy said that he has met with City of San Jose Vice-mayor Pat Dandi who serves on the task force. He is scheduled to meet with Council Member Forest Williams tomorrow. He indicated that the meeting scheduled with Mayor Gonzalez has been postponed but that this meeting will be rescheduled. He stated that the Council has requested a joint meeting be held, inviting Supervisor Gage, the School Board, Gavilan College, the City of Gilroy, San Martin community member(s) and the Morgan Hill City Council to participate in this meeting to see if this group can come up with a collaborative approach to deal with this issue.

Council Member Carr indicated that he spoke with Supervisor Gage and that he has stated that he would be happy to meet with the City Council and carry the City's issues to the table.

City Council Action

OTHER BUSINESS:

13. CONDUCT HEARING AND CONSIDER ADOPTION OF RESOLUTION OF NECESSITY FOR PROPERTY ACQUISITION FOR PROPOSED TENNANT AVENUE WIDENING – Resolution No. 5789

Director of Public Works Ashcraft presented the staff report. He informed the Council that staff has been working toward acquiring the right of way for the Tennant Avenue widening project since August 2002. Staff filed a notice of a Negative Determination in July 2003 in accordance with the City of Morgan Hill's process for compliance with the California Environmental Quality Act. He stated that a real property appraisal has been prepared by Hulberg and Associates for this parcel with offer letters being sent to property owners in September 2002 and revised offer letters in May 2003. He indicated that the property owners of 145 Tennant Avenue were notified of their right to present information at this hearing regarding the appeal for items 1, 2, 3 and 5 of the findings contained in the resolution. He stated that these are findings that the Council must make to proceed with the resolution. He summarized the findings contained in the resolution. He informed the City Council that the resolution has to be approved by a 2/3 majority vote of the City Council and that in addition to acquiring the property, a relocation consultant has been retained to assist staff in providing any required relocation assistance and/or benefits to the occupants of the property as a consequence of being displaced by this project. He stated that by adoption of the resolution, the Council is directing the City Attorney to institute and

conduct the conclusion action of eminent domain for the acquisition of the stated interest necessary for widening Tennant Avenue. He informed the Council that staff received two cards from property owners who are interested in speaking at the hearing: 1) Babe Heinberg, property owner representative; 2) Maurice Borquez, one of the four property owners.

Mayor Kennedy indicated that he also has a request from Rose Hernandez to address this item.

Mayor Kennedy opened the public hearing.

Sylvester Heinberg indicated that the trustees of the Hernandez estates are not challenging the City's right to take or to adopt the resolution of necessity. However, they are requesting just compensation for their property. He stated that the fifth amendment of the United States Constitution provides that private property may not be taken for a public use without payment of just compensation. Article 1, Section 10 of the California State Constitution provides that private property may not be taken or damaged by the government unless it pays just compensation. He said that the trustees are not challenging the right to take but are concerned with the appraisal prepared for the property. He shared a letter he received from the City via John Palmer with Cutler & Associates. He indicated that he has met with Mr. Cutler several times and has reviewed his cost estimates of \$82,750. It was indicated that the City would be limited to paying for shrubbery, fencing, bushes and the trees as well as the brick walkway and the front porch, valued at \$1,975. He stated that this did not ring well based on the current market prices in Morgan Hill. He indicated that he gave Mr. Palmer a list of four alternatives.

Council Member Chang entered and took her seat on the Dias.

Mr. Heinberg presented the Council with comparable sales in Morgan Hill. He said that Mr. Palmer brought in some comparable sales from Morgan Hill and Gilroy, with the average price being \$305,213. He said that the value for moving the house/garage back or their replacement is at \$280,343.50 and \$310,292. The trustees do not consider that the City has been fairly represented by Cutler and Associates. He felt that they have come a long way in wasting everyone's time as the same \$82,750 is being presented. He said that when he presented his information to Mr. Palmer many months ago, he sees that the City is still offering \$82,750. He noted that the City has accepted the adjacent properties from Ms. Gose, one of the trustees of the Hernandez Trust, paying \$51,500 for her property for the front 2,129 square feet. This amounts to \$24.189 per square feet, noting the front of this parcel does not have a house. The adjacent parcel (APN 817-04-006) belongs to the Hernandez trust and is being asked to give up 25.3 feet in the depth and 150 in width fronting on Tennant Avenue, amounting to 3,795 square feet. He indicated that using the same value of \$24.189 per square foot, this would amount to a value of \$91,797.25 solely for the land. He stated that the City paid another property owner \$95,000 for their frontage. He said that property values in the city have increased and that the total lost to the Hernandez Trust will be considerable in lost rent. He said that comparables of April 2004 provides a range in price values for the same size lot/house from \$350,000 to \$400,000; with an average of \$380,082. He did not believe that comparable numbers show a figure near \$82,000. He did not believe that the appraisal by George Delprado, a certified residential appraiser was contained in the City's file which indicates that a 3,900+ square foot house has a value of \$295,000 based on his comps. He felt that it would be a shame to go through a resolution of necessity as the last time he went through this with Caltrain they offered

\$25,000 for a 2 acre parcel to be used for the Hollister overpass using comps. He indicated that this case went to trial and that they had to pay four times this price. He felt that the Council needs to be fair with the Hernandez trust, paying them what the property is worth.

It was indicated that Maurice Borquez was ill and could not be in attendance.

Rose Hernandez felt that the family was being treated unfairly with the City's evaluation of the property. She indicated that eminent domain law states that the City must pay property owners fair market value. She stated that up until now the highest offer made from the City for the desired portion of the family's property is \$82,750. She noted that on page 5 of the appraisal summery statement, under improvements to be acquired, there is no mention of the rental house. She inquired whether the family gets to keep the rental house. She stated that the family has an appraisal of \$295,000 for the approximate 25 feet of Tennant Avenue frontage and the home which would need to be demolished. She referred the Council to a copy of the family's appraisal, paragraph 1 of page 8, prepared by George C. Delprado. She did not believe that the City has considered compensation for the loss of the rental income of \$1,150 per month or the relocation of the tenants. In the past, Mr. Palmer stated that the tenants in the home would be compensated for relocation. She inquired why the north side of Tennant Avenue was chosen for widening when the homes were there before the commercial area was built. She noted that Mr. Ashcraft's letter states that Mr. Palmer is available to negotiate with the family, indicating that Mr. Palmer has not returned her negotiator's phone calls. She stated that the family/trust looks forward toward continued negotiations with a more realistic price that includes tenant compensation.

No further comments being offered, the public hearing was closed.

Council Member Carr inquired whether the appraisal before the Council and the offer the City's consultant has made was for strictly for the amount of property needed for the widening of the street and not the entire lot.

Mr. Ashcraft indicated that he has been informed by legal counsel that compensation is something that the Council should not discuss this evening. The item before the Council is the need for the public to acquire the project and that compensation is to be worked out through another process. He stated that he was not prepared to talk about the compensation that has been offered.

City Manager Tewes said that the City has to provide evidence with respect to the offer that has been made. He stated that an offer was made for approximately 3,000 foot portion of the lot, not the entire lot. He said that the City made an offer that included severance damage. He said that it would be up to the owners on how they wish to deal with the house (e.g., move, demolish, or rebuild on the remainder of the lot). He clarified that the City's offer was based on the appraisal and some severage damage. He reiterated that staff has been advised by legal counsel not to discuss the issue of valuation. However, staff made the offer that was authorized.

Council Member Chang stated that she could not make a decision on this item as she did not know the value of the property.

Acting City Attorney Siegel identified the procedure that the Council would need to undertake this evening. He said that four of the five Council members would need to vote in the affirmative for the resolution. The resolution adopts findings, none of which concern the value of the property. He noted that one of the speakers stated that the Hernandez trust does not contest the right of the City to take the property. However, they have some questions about the City's evaluation. If the City was to move forward with the resolution of necessity, the evaluation would be handled in two methods moving forward: 1) a continued negotiation process; or 2) go toward jury trial where a group of peers would decide the value of the property. By moving forward with the resolution of necessity, it in no way prevents negotiations but may help negotiations along. He said that there is a great hesitancy to talk about costs, allocations, severance costs, value of the property and what would happen to the house/porch as these issues are not before the Council this evening. If the resolution of necessity is not approved, the property would never appear before the Council.

Mayor Kennedy disclosed that he met with Mr. Heinberg who went over some of the figures before the Council.

Mr. Heinberg indicated that he met with Mr. Palmer on several occasions and that in the most recent letter from him; he is still at the appraised level of \$82,750 as he was two years ago.

Council Chang inquired as to the square footage the City is proposing to acquire.

Mr. Ashcraft responded that the area needed for permanent street easement is at 3,796 feet and that the City also needs a temporary demolition easement for 4,835 feet in case the property owners decide not to relocate the house. If the trust elects not to relocate the house, the City would need this easement to demolish the house.

City Manager Tewes said that by adopting the resolution, the City is offering a total of \$82,750. Of this amount, \$37,500 is severance damage.

Mayor Pro Tempore Sellers said that it sounds as though the Council's charge this evening is very narrow. He noted that the Council is being asked whether or not to proceed with eminent domain. He said that the City has taken this action approximately 3-4 times during his tenure. He was proud to state that every single time; the City did not go to jury trial and has always been successful in negotiations. He stated that he is determined not to break that record in this case. He said that what the Council is stating that it would be like to acquire property as it is important to do so. He was pleased to hear that the representative of the property owners agrees that it is important. By adopting the resolution, it allows discussions of an appropriate amount. He felt that the City can negotiate the cost for the property. He requested that consideration be given to the purchase of the entire property. He felt that this may be an area that the City could negotiate. If the property owners are not interested in selling the entire property, the City should not pursue purchasing the entire parcel, only that portion needed for the right of way. He said that it was discerning to hear that it was stated that phone calls were not being returned and that the City's appraisers were not adequately responding to property owners. He requested that staff look into this and that the City provide adequate responses. He recommended that the Council proceed with this action item this evening.

Mayor Kennedy stated that it is important for the City to move forward with the widening of Tennant Avenue. He said that this is the first step in the process to get this project moving forward and may help speed up the negotiation process. He was confident that the City can work out an agreement that would be mutually acceptable to all parties.

Council Member Carr said that the City needs to make sure that phone calls are returned and that negotiations proceed as there is a lot more negotiations that need to take place. He felt that the City needs to make sure that it is being done in as open of a fashion as possible.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5789, Necessity for a Portion of Property Identified as APN 817-004-006 for the Proposed Tennant Avenue Widening Project*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Expenditure of \$82,750 for Property Identified as APN 817-004-006, Plus Escrow and Closing Costs for the Acquisition of this Property.*

City Manager Tewes indicated that the City will initiate contact to enter into negotiation discussions.

Note: *Please see amended motion/action toward the end of the minutes.*

City Council Action

CONSENT CALENDAR: (Continued)

Action: *On a motion by Council Member Chang and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Item 14, as follows:*

14. APPROVAL OF RIGHT OF WAY PURCHASE AGREEMENTS FOR TENNANT AVENUE WIDENING (APN: 817-04-002 AND 817-04-008)

Action: *1) **Approved** Purchase; and 2) **Authorized** the City Manager to Execute Purchase Agreements, Subject to Approval as to Form by City Attorney, with the Owners of APN 817-04-002 and APN 817-04-008 for Total Compensation of \$95,000 and \$168,767 Respectively, plus Escrow and Closing Costs for the Acquisition of Portions of These Properties.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

15. WORKPLAN FOR THE DOWNTOWN PLAN

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the workplan is one that is in progress and can be modified to reflect the workshop discussions as this is a mechanism by which to begin discussions for the Downtown Plan. He indicated that the workplan and the Downtown Plan are broken into two sections. He said that within the Downtown Plan there is an implementation strategy that includes non-public improvement activities and public improvement activities. He addressed the key non public improvements activities as follows: amending the General Plan and Land Use Map/zoning ordinance. Part of this will include limiting ground uses to retail and making sure that design ordinances are consistent with the Downtown Plan. He indicated that at this time, the City is not establishing a commercial rehab loan program for the downtown as staff is awaiting the completion of the Downtown RFC before allocating funds to this type of program. Also, the Agency continues its support of the Downtown Association. He stated that the Downtown Plan prioritizes public improvements. He identified the public improvement priorities as follows: Monterey Road traffic calming improvements; Llagas Creek Flood Control Improvements; and Parking Resources Management Plan; Depot Street landscaping and urban design; pedestrian crossing at Caltrain Station; facade and private signage; public signage improvements; Llagas Creek Landscaping and Bicycle Path; and the Third Street Urban Design Improvements and Focal Point. He informed the Council/Agency Board that a possible source for these activities is the monies that have been reserved for the Downtown RFC (\$1.8 million) should the Council/Agency decide not to fund various downtown RFC activities. He indicated that there were second tier priorities listed within the Downtown Plan. He stated that staff does not recommend funding the secondary tier priorities at this time. He said that staff will continue to work with the Downtown Association to refine this.

Mayor/Chairman Kennedy requested that Mr. Toy provide the Council/Agency Board with a copy of his presentation as it is a better summary than what was included in the agenda packet. He stated that he did not see an item included for the downtown trail along Llagas Creek in the downtown area.

Mr. Toy said that within the Downtown Plan, in terms of the Llagas Creek improvements, it only talks about taking the trail to the downtown. He stated that unless there is enough room to construct a trail to the downtown, it may be an expensive project. He indicated that staff would need to investigate whether it was included in the second tier priority. He clarified that staff did not assign timing or a budget amount to this activity.

Mayor/Chairman Kennedy stated that he would like to see the trail included as part of the Downtown Plan.

Mayor Pro Tempore/Vice-chair Sellers stated that he recalls that this project is specifically outlined as an option for the Water District to undertake. He said that this project may be listed in the CIP, under flood control. However, he felt that this project is under their purview. He indicated that the Downtown Committee met early on with Water District representatives where they presented a plan. The Downtown Committee made it clear that the City expects that there would be a trail incorporated in the Llagas Creek plan.

City Manager/Executive Director Tewes said that the Council/Agency Board needs to be clear about what the Downtown Plan provides. He said that the Downtown Plan looked at the designs that the Water District had for the PL566 through the downtown, and learned that there is a very narrow right of way available in some of the sections between Dunne and Main Avenues. Some of these areas are so narrow that it required a special design in one section that could not accommodate a trail unless there was very expensive acquisition of existing built up properties to accommodate the trail.

Mayor/Chairman Kennedy requested that the trail to the downtown be included in the long term Downtown Plan.

In response to Mayor Pro Tempore/Vice-chair Sellers question, Mr. Toy informed the Council/Agency Board that the General Plan updates would occur in September or October 2004.

Mayor Pro Tempore/Vice-chair Sellers inquired whether there were any Measure C projects that would not be able to move forward until the General Plan updates or residential rezoning occurs.

Planning Manager Rowe indicated that the City cannot complete the land use changes until the CEQA process is completed. He stated that it is anticipated that the CEQA process would be completed in time for the Planning Commission to review in September and for Council review in October 2004. He said that it would require changes to be in place for projects wishing to proceed in the Measure C competition. He indicated that the filing deadline for Measure C is October 1. He said that staff is trying to determine whether these dates could be moved where the Council could act on the general plan updates as a floating date in September 2004. Doing so would allow Measure C residential projects the ability to submit an application by the October filing deadline.

Council/Agency Member Carr expressed concern that should the City not allow downtown projects to compete under this round of Measure C competition, it would be two years before downtown projects can compete. He requested that staff give some thought to pushing back the October 1 deadline for downtown projects.

Planning Manager Rowe said that the Council/Agency Board could elect to hold a single year competition this year and start the two years the following year. Another alternative would be to have a separate competition for the downtown that would occur the following year. He indicated that staff would look at the various options and advise the Council which would work best.

Mayor/Chairman Kennedy stated that earlier, when the Council approved item number 9 which authorized \$300,000 to help the Corp of Engineering with the PL566 project, the expenditure will help to keep the work activity on schedule as it is important to the downtown.

Mayor Pro Tempore/Vice-chair Sellers indicated that the Downtown Association has been actively involved in the review of the workplan and have some areas of concern. He said that there were a few items that were not a part of the plan. This includes areas of implementation. He felt that this may warrant Council involvement but felt that most items can be worked out between the Downtown Association and staff.

Mayor/Chairman Kennedy addressed the tour sponsored by the Downtown Association that the Council took. He stated that the Council/Agency Board toured three different downtowns that were successful (Rockridge, Palo Alto, San Mateo). He noted that the success of these downtowns was attributable to the fact that they had a single lane of traffic that slowed traffic down; making the downtown more pedestrian friendly. He felt that it was critical that the City move forward as quickly as possible with the traffic study and changing the downtown to a one lane of traffic flow in each direction. Also, seen in these downtowns was housing on upper levels and retail on the first floor/grade levels. He said that a mixed use was also critical to having a successful downtown. He felt that these were two very important issues that would help the downtown to be viable, alive and successful.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0): 1) **Accepted** the Workplan for the Downtown Plan; and **Directed** Staff to Schedule Future Council Workshops to Discuss the Recommendations and Findings of the Traffic Study Regarding Monterey Road and the Parking Management Plan.*

City Council Action

OTHER BUSINESS: (Continued)

16. STATUS OF REGIONAL SOCCER COMPLEX PROJECT

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the City of San Jose has identified approximately \$300,000 to be reserved for the soccer complex EIR. He noted that the Redevelopment Agency has reserved \$1 million toward this project with the CYSA coming up with funding for the balance of the project. He informed the Council that staff has contracted with Beals Alliance to prepare a preliminary site plan, construction cost estimate and timeline for the soccer complex to help facilitate the EIR. He stated that the City of San Jose is trying to coordinate a meeting for next Friday. At this meeting, all groups are to comment on the preliminary site plan and that Beals will take these comments, returning in approximately three weeks with a revised site plan and a scope of work that can be taken by the City of San Jose and put into an RFP for EIR consultants. He informed the Council that the City of San Jose believes that it would have a consultant under contract to prepare the EIR in August, taking seven months to prepare and approve said EIR. After the approval of the EIR, it will take approximately 12 months to design and build the facility with a March 2006 target date for the opening of the regional soccer complex.

Mayor Pro Tempore Sellers inquired what the CYSA would be anticipating as far as the interim year. He noted that CYSA would be concluding their contract with the City at the end of this year and that it would be March 2006 before the opening of the new facility.

Mr. Toy responded that staff has not had discussions with the CYSA as to their plans after December 2004.

Mayor Kennedy inquired whether there was a way to speed up this process.

Mr. Toy stated that the EIR is on the shoulders of the City of San Jose. It was staff's original belief that the City of San Jose would have an EIR consultant on board months ago. At this point, the City of San Jose is indicating that they need the scope of work and that it would take 2-3 months to prepare an RFP and award a contract. He stated that 7 months is very aggressive schedule and that if an EIR is not required, the review could be completed sooner.

Mayor Kennedy expressed concern that it would take so long to get the soccer complex up and running. The potential for not having a soccer facility in Morgan Hill or delaying the soccer complex from being converted to a multi sports complex is a concern. He requested that staff come up with a timeline. He offered to address a letter to the City of San Jose, jointly with the CYSA, that focuses on the possibility that they may be out of a location unless they can jointly get San Jose to move forward quickly.

Council Member Chang said that what is holding the City of San Jose up is the preparation of the site plan. She said that the City of San Jose has been talking to the City of Morgan Hill for approximately two months, noting that the City does not have the site plan. She said that the City of Morgan Hill originally committed to the preparation of a site plan.

City Manager Tewes said that staff finds it odd that the City of San Jose staff will not even initiate the process to seek proposals for an EIR until a completed site plan has been prepared. He indicated that a site plan has been prepared under contract with Beals and that the City recently learned that the City of San Jose did not believe that it was adequate. Therefore, Beals firm will need to prepare another site plan.

Council Member Chang said that she had a conversation with San Jose Council Member Forrest Williams last week who promised that he would commit to doing the City of San Jose's part if the City of Morgan Hill does theirs.

Mayor Kennedy inquired whether the site plan could be expedited.

Mr. Toy stated that the City of San Jose has indicated that they took the City's preliminary site plan and that they have some issues with it in terms of planning and other setback requirements. He said that they have yet to share these concerns with staff. It was indicated that at Friday's meeting they will share their comments with the City of Morgan Hill and that others should bring their comments regarding the site plan. Once this occurs, Beals will take the comments and turn around in three weeks with a revised site plan. He felt that this meeting should provide sufficient information to proceed with an EIR. Originally, the City of San Jose wanted to wait until a complete master plan was prepared. He noted that Beals' total scope of work was completed before the issue of the EIR was raised. It is staff's belief that the City of San Jose only needs enough programming information to proceed with an RFP and that they do not need the completed master plan.

Council Member Chang expressed concern with the lease. She said that it is her understanding that once the lease expires; CYSA is on a month to month lease until a 30-day notice is given. She did not see the City having enough money to proceed with an outdoor recreation center by December 2004. It was her belief that the CYSA would give the City a 30-day notice before the City is able to give a 30-day notice.

Mayor Kennedy noted that the CYSA would not be able to lease the site until March 2006. He indicated that the sports complex advocates are talking about taking the fields as they are and doing a lot of the work themselves so that they can move quickly within the established budget.

Mayor Pro Tempore Sellers noted that it construction of a new soccer complex could commence in March 2005 and be completed by March 2006.

Mayor Kennedy noted that it did not take long to construct the soccer complex in Morgan Hill. He felt that what would need to be done at the Sobrato site would be more difficult. He stated that he did not want to usurp the authority of the Council soccer subcommittee.

Council Member Chang supported Mayor Kennedy's offer to draft a letter to the City of San Jose. She indicated that the Council soccer subcommittee will use their influence.

Mayor Pro Tempore Sellers felt that Mayor Kennedy's letter would be complimentary to the subcommittee's efforts.

Council Member Carr supported doing everything the City can to expedite the process. He did not understand why the RFP could not be sent out for the EIR. He felt that the City needs to be careful with the site plan and not let the first design move forward. He noted that the City spent a lot of time with the School District reviewing traffic ingress/egress off of Monterey Road. As he reviews the site plan, he felt that it will cause problems, the exact problems discussed with the School District a few years back. He recommended that the City review the site plan and make sure that it is one that will work, not one being pushed through for expediency sake. He addressed the use of the \$1 million that the City has committed to assist the CYSA move off the City site in order to develop the sports complex sooner. He said that the Council needs to discuss how the \$1 million is to be used. He expressed concern, in reading the City of San Jose's memo that it indicates that the City of Morgan Hill has reserved \$1 million for the project as compensation for dislocating the CYSA from the soccer park. He did not believe that the \$1 million was set aside for compensation for dislocation. He noted that the City has a lease with the CYSA and that the City owns the property, therefore, the City was not dislocating CYSA. He felt that discussions should be undertaken to determine what the \$1 million is to be used for. Initially, he felt that the Council allocated the \$1 million for capital expenditures to help build the site. He inquired whether the City could invest these dollars and that any interest earned by these dollars would go to CYSA for operational costs. This would allow maintenance of the facility in a way that would encourage the organization to utilize the soccer fields, resulting in an attractive gateway into Morgan Hill. The investment could be tied to a number of years or as long as CYSA operates the site. Once CYSA terminates the use, the \$1 million would return to the Morgan Hill RDA. He inquired

whether this would be a proper use of RDA dollars and whether it would generate enough funds to maintain the fields.

City Manager Tewes noted that these are RDA tax increment dollars and that they can only be used for capital purposes. The RDA tax increments cannot be used for maintenance. He did not believe that the funds would generate a lot of interest.

Council Member Tate noted that the staff report states that \$1 million has been set aside for the CYSA move. This was his concept but in a more generic sense of the move. He said that there may be hurdles that come up. He felt that the Agency set aside some funds to help remove these hurdles and not to facilitate the move or to plant turf, etc. He felt that the money was set aside so that it could be used in case situations came up that need to be resolved.

Council Member Carr felt that the \$1 million could be used to make sure that the site is to be vacated and left in a condition that would allow moving forward with a sports complex.

Council Member Chang stated that CYSA is doing the City a service by maintaining the fields. She felt that when the Council originally discussed this issue, she heard that it may take more than \$1 million to allow the soccer complex to relocate and move forward. She said that she was happy to see that the City of San Jose is releasing \$300,000 to perform the EIR in light of the budget situation. She felt that it was time for the City of Morgan Hill to push forward with this project. She felt that the City of San Jose would identify items and want to use the \$1 million. She requested that the soccer committee be allowed to do their job and move this project forward.

Council Member Carr said that he would be happy to allow the subcommittee to do its job. However, the Council/Agency will need to eventually decide how the dollars are to be sent. He stated that he does not know what CYSA was putting into the project. He noted that the Council/Agency has not had the opportunity to discuss what the \$1 million would be used for. He said that he would support using some of these funds to expedite the process.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *No action taken*

**13. CONDUCT HEARING AND CONSIDER ADOPTION OF RESOLUTION OF
NECESSITY FOR PROPERTY ACQUISITION FOR PROPOSED TENNANT AVENUE
WIDENING**

Council/Agency Member Chang stated that she would like to change her vote on the second action item as listed under agenda item 13.

Acting City Attorney/Agency Counsel Siegel said that if the expenditure identified in action item 2 is not approved, it would nullify approval of action item 1. If both actions are not approved, the resolution

does not pass as part of the action deposits a sum of money with the State and the City would not be able to proceed with the resolution of necessity without this deposit.

Action: *On a motion by Council Member Chang and seconded by Mayor Kennedy, the City Council unanimously (5-0) **agreed** to reconsider the vote taken on agenda item 13, second action item.*

Mayor Pro Tempore/Vice-chair Sellers said that it was his understanding that in order to initiate the resolution of necessity, the City has to deposit the money in the bank, based on the last appraisal. The action before the Council is placing the money in the bank and that negotiations would proceed.

Council/Agency Member Chang stated that she did not want to give the property owners the impression that she is offering this amount of money for this project as she did not believe that this is the amount the land was worth.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-1 vote with Council Member Chang voting no, **Approved** the Expenditure of \$82,750 for Property Identified as APN 817-004-006, Plus Escrow and Closing Costs for the Acquisition of this Property.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Chang requested that discussion of the High Speed Rail be referred to the Legislative Subcommittee. She indicated that the Cities Association may want to recommend that the Board move forward with this project and recommended that the City voice an opinion.

City Manager Tewes indicated that the City has recirculated a draft EIR on the Institute Golf Course project. He stated that the final impact report and the proposed action to adopt a Planned Unit Development (PUD) for this project will go before the Planning Commission on May 25. It was staff's hope and expectation that Council review of this project would be scheduled on June 2, 2004. In looking at other planned items for the June 2 meeting, he noted that there were a number of public hearings and other development issues to be reviewed by the Council. June 2, 2004 is the public hearing that has been scheduled for the budget. He indicated that the Council may wish to consider a June 9 special meeting for the sole purpose of hearing the Institute PUD and EIR. He said that staff anticipates the presentation of the EIR to be somewhat lengthy and complex with considerable public testimony.

Mayor Pro Tempore Sellers supported conducting a special meeting on June 9 for the Institute Golf Course project as the Council is trying to avoid a meeting on June 23.

Mayor Kennedy agreed that it made sense to have a separate special meeting for the Institute Golf Course.

Council Member Chang informed the Council that the Santa Clara Cities Association and the Commonwealth Club is jointly hosting a seminar featuring David Osborne, the author of Reinventing

Government, on June 24, 2004 at 6:15 p.m. at the Flames Restaurant located on Meridian Avenue, San Jose. She encouraged all Council members to attend this seminar.

City Manager Tewes indicated that there had been some indication about scheduling an ordinance to address replica guns within the City Limits of Morgan Hill. In light of the complexity of this issue, staff wants to know if the Council wishes to have the City Attorney's office draft an ordinance for Council consideration. If so, he requested that the Council give the City Attorney's office sufficient time to investigate/prepare a draft ordinance.

Mayor Kennedy requested that staff agendaize the discussion of a draft ordinance on replica guns.

CLOSED SESSION

Council Member Chang indicated that the Council did not close one closed session item and requested that the Council adjourn to closed session.

Mayor Kennedy indicated that he announced that no reportable action was taken in closed session.

City Attorney Siegel indicated that the Mayor Kennedy, upon reconvening from closed session, announced that the Council concluded closed session discussions and stated that no reportable action was taken in closed session. He stated that the Council can agree to continue with closed session. The question is whether the closed session was closed. If the closed session portion of the meeting was in deed closed and adjourned, there is no need for the Council to return to closed session. He noted that it was his impression that the closed sessions were concluded; however he was not in attendance in closed session discussions.

RECESS

Mayor/Chairman Kennedy announced a recess in order to discuss closed session procedures with the Acting City Attorney/Agency Counsel at 9:37 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 9:48 p.m.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:49 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY